

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAPITAL FUNDING, LLC, a)	
Maryland limited liability)	
company,)	
)	Docket No. 24 C 888
Plaintiff,)	
)	Chicago, Illinois
v.)	February 8, 2024
)	1:01 p.m.
BATAVIA, LLC, et al.,)	
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS - Plaintiff's Emergency Motion for
Appointment of Receiver - Volume 2
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

For the Plaintiff: MS. PAIGE B. TINKHAM
MR. KENNETH J. OTTAVIANO
Blank Rome LLP
444 West Lake Street, Suite 1650
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For the Defendants: MR. SCOTT AHMAD
Winston & Strawn LLP
35 West Wacker Drive
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Also present: MS. KRISTINA STANGER (Martin Brothers)

Court Reporter: ELIA E. CARRIÓN, CSR, RPR, CRR, CRC
Official Court Reporter
United States District Court
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1 (Proceedings heard in open court.)

2 THE CLERK: This is Case No. 24 CV 888, Capital
3 Funding, LLC v. Batavia, LLC.

4 May I please ask the attorneys present on behalf of
5 the plaintiff to state their names.

6 THE COURT: You can all remain seated and just make
7 sure you speak into a mic.

8 MS. TINKHAM: Thank you. On behalf of the plaintiff,
9 Paige Tinkham and Kenneth Ottaviano. We also have in the
10 courtroom with us Jennifer Loucks from Capital Funding, LLC,
11 the plaintiff, as well as Anthony Hope as a potential witness.

12 THE COURT: Very good. Thank you.

13 THE CLERK: And on behalf of defendants, please.

14 MR. AHMAD: Good afternoon. Scott Ahmad from
15 Winston & Strawn on behalf of the defendant entities. I also
16 have with me Mr. David Campbell, who's here on behalf of the
17 defendant entities as well.

18 THE COURT: All right. Very good. Well, we're here
19 on plaintiff's emergency motion for appointment of a receiver.
20 I heard some oral argument on it the other day, but I realized
21 that it just had too much -- there's too much to cover to
22 handle in a phone call, so I -- we had it reset for today. I
23 had originally -- I had asked my courtroom deputy to see if
24 the parties intended to call witnesses. At first, it didn't
25 appear to be so. Now I think there are witnesses that are

1 going to be called, which is fine. That's why we're here.

2 So we'll start with plaintiffs. It's your motion;
3 you have the burden. And if you intend to call witnesses,
4 that's fine. If you intend to just argue and make a decision
5 on whether to call witnesses, that's fine too.

6 So how do you want to proceed?

7 MS. TINKHAM: Your Honor, I believe we can start with
8 argument, and if witnesses are necessary, based upon the
9 defense's position, we can call witnesses thereafter, if that
10 is okay with Your Honor.

11 THE COURT: That's fine.

12 Mr. Ahmad, how does that work for you?

13 MR. AHMAD: Yeah, we have no objection proceeding
14 that way as well.

15 THE COURT: Okay. Very good.

16 You can argue from the podium -- you have to turn it
17 around toward me -- or you can do it from the tables, which is
18 fine. That's often how I do it now because the microphones
19 work just fine for my court reporter to pick you up.

20 And I think there's someone listening in, maybe from
21 one of the -- is that from the plaintiffs.

22 MS. TINKHAM: No, Your Honor. I believe it's a
23 third-party vendor.

24 THE COURT: Okay. Who is on the line, if you can
25 hear me?

1 MS. STANGER: That's correct, Your Honor. Good
2 afternoon. My name is Attorney Kristina Stanger, and I
3 represent Martin Brothers distribution. Thank you.

4 THE COURT: All right. What is -- and I'll ask the
5 attorney in court: What is Martin Brothers distribution
6 relationship to either side?

7 MS. TINKHAM: Your Honor, my -- there is no
8 relationship. I believe -- or I'm sorry; are you asking --

9 THE COURT: Well, I'll -- actually, I'll ask the
10 person on the phone.

11 What is your relationship to the parties in this
12 case?

13 MS. STANGER: Thank you, Your Honor. We are a vendor
14 to the defendant facilities.

15 THE COURT: Okay. Very good.

16 MS. STANGER: We're a food and beverage vendor.
17 Thank you.

18 THE COURT: Okay.

19 MS. STANGER: Just monitoring today, Your Honor.

20 THE COURT: Sounds -- sounds fine. Thank you very
21 much.

22 Okay. Then we'll start with plaintiff. Ms. Tinkham,
23 are you going to argue first?

24 MS. TINKHAM: Yes, Your Honor.

25 THE COURT: All right. Proceed.

1 MS. TINKHAM: Your Honor, we're here today seeking
2 the appointment of a receiver, as you know --

3 THE COURT: And you're going to have to slow down
4 even in court.

5 MS. TINKHAM: Your Honor, as we set forth on Monday,
6 we're here seeking appointment of receiver over the
7 defendants. These are nine senior care facilities located
8 throughout Illinois, including here in the Northern District,
9 that have the ultimate ownership of an individual named
10 Mark Petersen.

11 These defendants -- there's about 70 homes throughout
12 Illinois. Capital Funding, the plaintiff here, is a lender on
13 loans to nine of these facilities, which are the defendants
14 subject here.

15 THE COURT: These are -- these are nursing home
16 facilities. What is the Petersen relationship to the nursing
17 home facilities?

18 MS. TINKHAM: Mark Petersen? Mark Petersen's the
19 ultimate owner. So if you go up the chain of ownership
20 throughout -- you have the -- you have propcos, property
21 owners, that own each of the real estate where the facilities
22 operate; then you have operators that operate on them. If you
23 go up both their chains of ownership, you ultimately get to
24 Mr. Petersen.

25 THE COURT: And who do you have the loan relationship

1 with, the actual LLC, physical buildings --

2 MS. TINKHAM: Yes. So --

3 THE COURT: -- that own the physical buildings?

4 MS. TINKHAM: There are loans to the owners of the
5 real property that are also guaranteed by the operators of the
6 property in terms of a security agreement where all of the
7 assets were pledged to secure the loan of --

8 THE COURT: All right. And then there's assignment
9 of rents, et cetera, to your client too?

10 MS. TINKHAM: Yes, by the operators.

11 THE COURT: All right. Go ahead.

12 MS. TINKHAM: There's also a master tenant, which
13 really is not relevant to these proceedings. It is a
14 defendant, but it is, you know, sort of a master tenant that
15 then subleases to the operators so that -- who then lease from
16 the propco. So in the chain of ownership, but really not
17 relevant to -- to our proceedings here today. It's just one
18 of the defendants.

19 THE COURT: And the -- the defendant LLCs, the actual
20 nursing homes themselves, what is -- is Mr. Petersen part of
21 that LLC, or is one of his entities part of the LLC -- one of
22 the principals or -- one of the principals of the LLC or is
23 it --

24 MS. TINKHAM: Yeah. If you go up the chain -- so
25 just going back to our diversity allegations within the

1 complaint where I have the chains all laid out, it's 'cause
2 it's not a direct line. But he is the ultimate owner. So we
3 have the propco owners...

4 Hold on.

5 (Counsel conferring.)

6 THE COURT: It's not -- I just want to make sure,
7 Mr. Ahmad, you represent the defendants that are subject to
8 the agreements. Is that correct?

9 MR. AHMAD: That's correct, Your Honor.

10 THE COURT: All right. And you may represent the --
11 Mr. Petersen or his LLC, but the key entities here, at least
12 for purposes of the -- in my mind, at least, the allegations
13 relating to the defaults are the -- the nine individual LLCs.
14 And you are the attorney for them.

15 MR. AHMAD: That is correct, Your Honor.

16 THE COURT: All right. Very good.

17 You don't have to go further into the ownership --

18 MS. TINKHAM: Okay.

19 THE COURT: -- tangles. I can deal with that at some
20 other time.

21 MS. TINKHAM: Okay. Thank you, Your Honor.

22 And just for purposes of ease of descriptions since
23 there are nine defendants, I do refer to them as the Petersen
24 entities. Not to be confused that it's him, but just so we
25 don't go through all nine here today.

1 THE COURT: That's fine.

2 MS. TINKHAM: Okay. So Capital Funding itself has
3 loans to each of these nine entities. They're separate loans
4 to each entity, each propco entity. In agg- -- in the
5 aggregate, they're owed over 19 million on these loans. Those
6 loans are also insured by HUD, the department of urban
7 development.

8 In January -- beginning in December 2023, the
9 defendants missed their payments on these loans. So we have
10 payment defaults for December 2023, January 1, 2024, and now
11 February 1, 2024. I think there was a little bit of dispute
12 on the call on Monday whether that's subject to dispute or
13 not, the payment defaults. I don't know if defendants are
14 here protesting that today, but I do have in court with me
15 Jennifer Loucks from Capital Funding who is -- who can testify
16 to the payment defaults with her overseeing of the records.

17 The notice of acceleration was sent with her notice
18 of default in the beginning -- in -- in January to the
19 defendants. It's very clear under the loan documents that if
20 there's a payment default, that that's an event of default
21 under the loan documents.

22 Under the assignment of rents and leases, there's a
23 very clear provision, Section 2(d), that sets forth that the
24 operator agrees that the secured party's entitled to the
25 appointment of a receiver upon the occurrence of an event of

1 default. We think that's very clear contractual language.
2 There's not ambiguity there with respect to a contractual
3 agreement to appointment --

4 COURT REPORTER: Slow down, please.

5 THE COURT: Yeah, it's -- it's -- off the record.
6 (Off-the-record discussion.)

7 THE COURT: Okay. Back on the record.

8 MS. TINKHAM: Thank you, Your Honor.

9 Your Honor, to recap, we think that Section 2(d), the
10 assignments of rents and leases is a very clear contractual
11 provision providing for the appointment of a receiver upon an
12 event of default.

13 THE COURT: Before we get to the factors beyond that.
14 Do you agree there's been a default and agree that the
15 appointment of a receiver is at least something that is in the
16 documents? I may have to consider other factors to decide
17 whether or not the appointment is appropriate, but there's
18 been an agreement -- I think the language, in fact, "operator
19 hereby agrees that secured party is entitled to the
20 appointment of a receiver for the healthcare facility upon the
21 occurrence of an event of default hereunder.

22 So my question of you is: First, do you agree
23 there's been an occurrence of an event of default hereunder?

24 MR. AHMAD: Yes, Your Honor. And I told Paige on
25 Monday, we met and conferred after the hearing, that we were

1 not going to be contesting that there was a default.

2 And as to Question 2, again, we acknowledge the
3 language in the loan document. I'll review during my argument
4 some of the case law that the Court, even despite an agreement
5 like that, has to consider the other equitable factors --

6 THE COURT: Right.

7 MR. AHMAD: -- but agreed, Your Honor.

8 THE COURT: Okay. Very good. So I think we can go
9 past that. I thought that was the position of defendants from
10 our phone call, but now we're really into the issue of the
11 other equitable factors. That's a key factor, the fact that
12 the plaintiff -- or the defendant, rather, agrees to the
13 appointment of a receiver. Not necessarily dispositive, but a
14 major factor that I have to consider. And you should address
15 the other factors that you set forth, and we'll see as you go
16 through them one by one whether there's a contest relating to
17 factual allegations you make. And if there is, we'll know
18 what the scope of this hearing's going to be like.

19 Go ahead.

20 MS. TINKHAM: Perfect, Your Honor.

21 Your Honor, in considering the equities outside of
22 the contractual provision, we think one of the major -- first
23 major points is the lack of liquidity on behalf of the
24 defendants. They have -- we know from other cases they've
25 failed to provide information to my client in this case, which

1 we're -- have the ability to testify to if needed here today.
2 But they are -- they have significantly stretched accounts
3 payable. We believe that those are two critical vendors of
4 the facilities. You have food vendors; you have pharma
5 vendors; you have therapy vendors. We believe they're all
6 significantly stretched.

7 We --

8 THE COURT: What's the basis of your -- I mean, when
9 someone defaults on the major loan obligation they have,
10 there's always trouble with vendors and other creditors, but
11 what is -- other debtors -- other people that owe money, what
12 is the -- or owed money to.

13 What is the basis for your knowledge that there
14 are -- I think there's -- your belief, based on the Rockford
15 case, is there may be payroll that's being missed; there may
16 be vendors not getting paid. What is the basis of your
17 knowledge of that relating to these entities?

18 MS. TINKHAM: Your Honor, because we have not been
19 given the information, which has been requested multiple
20 times, we don't have that information here. The only basis we
21 have here, we do know this week Capital Funding exercised its
22 rights under its deposit account control agreements with the
23 defendants. When they did that, the institution holding the
24 account, CIBC, informed them that there was checks that were
25 going to bounce in the account. There was -- checks had been

1 presented for payment. There was insufficient funds to pay
2 them. They were informed -- Capital Funding was informed of
3 this.

4 At that time, they said -- the defendants told CIBC
5 that they were going to wire funds into the account from some
6 other account. We don't know where -- we don't know where the
7 funds are coming from, but we know that they were bouncing
8 checks within our accounts. That is the only information
9 we've been provided because we've been refused the information
10 we've requested.

11 THE COURT: And is the information that you requested
12 something required under the loan agreements?

13 MS. TINKHAM: It's required under the loan
14 agreements. We also know it's very easy for the defendants to
15 provide. They very easily provided it in the *X-Caliber* case,
16 the Rockford case, and they refuse to do that here after the
17 order was entered in the *X-Caliber* case.

18 THE COURT: Well, what -- was there an order -- court
19 order requiring them to turn it over in this case? I didn't
20 enter one. Was there anything in Judge Johnston's order that
21 would have covered the entities in this case?

22 MS. TINKHAM: No. So the information -- let me just
23 take a step back. The information should be produced under
24 the loan agreements where they're required to provide
25 information. It was requested and it was refused. So that

1 was another breach under the loan agreements of providing the
2 information that they're supposed to provide, but no --

3 THE COURT: Refused or we'll get back to you?

4 MS. TINKHAM: We'll get back to you. And --

5 THE COURT: Right. Because I understood from your
6 filing they said, it's beyond our bandwidth to provide you
7 with all the information you're requesting.

8 MS. TINKHAM: Yes, Your Honor, you're correct. I --
9 failed to provide would be the correct response.

10 THE COURT: Okay. All right. And is there a
11 timeliness requirement under your loan agreement on when those
12 documents and requests for production of documents has to be
13 accomplished?

14 MS. TINKHAM: It's a good question, Your Honor, that
15 I can look at the loan documents to confirm for you. With
16 respect to the ability to provide, though, we know that it
17 is -- for most of it, it's literally a click of a switch to
18 provide it to the consultants. They provide them access, and
19 then no work is required on behalf of the defendant. The
20 consultants are able to look at it and analyze it, but that --
21 all of that access was just simply ref- -- not provided.

22 THE COURT: What have you requested?

23 MS. TINKHAM: We've requested very basic information.
24 Are you current on paying your taxes? Are your vendors
25 threatening to shut off services? Are you segregating funds

1 amongst the facilities?

2 THE COURT: Those are more interrogatories than
3 documents. Are there -- does the loan agreement require you
4 to -- require the borrower to answer questions, as opposed to
5 provide documents?

6 MS. TINKHAM: Your Honor, the -- the loan agreement
7 requires access to information. I would agree it's not
8 interrogatories. So if you want to -- even just looking at
9 basic documents, we asked for an AP aging. That was not
10 provided.

11 THE COURT: Okay.

12 MS. TINKHAM: We asked for a 13-week cash flow. That
13 was not provided. We asked for proof of liability insurance,
14 and that was not provided.

15 THE COURT: Okay. And it looks like -- I heard
16 Mr. Ahmad on the phone saying they just got insurance,
17 although you haven't been provided the policy or proof of
18 that.

19 MS. TINKHAM: No. So what we've been provided -- we
20 did -- right after the hearing on Monday, Mr. Ahmad provided a
21 specimen preview of insurance, so it's not been issued. The
22 document we received on Monday didn't list who that -- who
23 that policy would cover; it didn't identify whether it had
24 been paid for or not.

25 Today, right before the hearing, we received a second

1 new document that does list all of the facilities as
2 attachments. However, it does not meet the requirements under
3 the loan agreement for insurance. HUD requires to be named as
4 an additional insured. That's not set forth on the
5 certificate. As well as Capital Funding as an additional
6 insured, that's not set forth in the certificate.

7 And the big issue with the insurance is, it's just a
8 preview. It has not been issued, nor do we know if the
9 defendant has funds to actually pay for it. What we had been
10 told is that they were going to seek funding from the lenders
11 to pay for insurance.

12 Nobody has contacted Capital Funding --

13 THE COURT: You're the lenders, so you'd know if you
14 got contacted.

15 MS. TINKHAM: Yes. No one's contacted us.

16 THE COURT: Okay.

17 MS. TINKHAM: So we don't know that there's funding
18 for it.

19 THE COURT: Okay. Continue. What other -- my
20 questions related to what you hadn't gotten that you believe
21 you were entitled to get under the loan documents.

22 MS. TINKHAM: Uh-huh.

23 THE COURT: And that would provide you proof of the
24 illiquidity of the defendants, beyond the obvious proof of
25 that by the nonpayment of -- on the notes --

1 MS. TINKHAM: Yes.

2 THE COURT: -- unsecured notes.

3 MS. TINKHAM: We also -- we do have -- we have
4 attached to Jennifer Loucks's declaration that was submitted
5 with the motion, you know, we have emails from the defendant
6 saying they're -- they have been financially crippled by their
7 cyberattack. We -- you know, they have made multiple
8 statements of their financial difficulties. We just have not
9 been provided the documents to put into evidence to show that.

10 THE COURT: Okay. All right. I think I understand
11 the issue, but is there more -- and I'll give you a chance to
12 speak more, but that --

13 MS. TINKHAM: With respect to --

14 THE COURT: -- are there other things you want to
15 address as to the equitable reason why a non -- not just the
16 language from the -- Section 2(d), but is there other
17 considerations that you want to present that I should
18 consider?

19 MS. TINKHAM: There are, Your Honor. We're very
20 concerned about the health and safety of these residents. In
21 order to maintain these facilities, liquidity and funding is
22 required. And if it is not there, you know, these residences
23 are at risk of not receiving their basic life requirements of
24 food, pharma.

25 I think that leads over a little bit into what we

1 just talked to. But separately, these facilities have issues
2 of very difficult rating. So Medicare gives a star rating.
3 These facilities are one star out of five. One being the
4 lowest on the totem pole. These facilities have abuse icons,
5 which means that there have been significant issues at the
6 facilities. The -- in the last -- let's see. In the last
7 survey cycle they were cited for fines, as well as days for
8 denial of payment of new admissions.

9 THE COURT: Well, let me ask you this: And I've read
10 that in your memorandum, so I'm not cutting you off. I did
11 see that.

12 Who has responsibility for inspecting these? The
13 Illinois Department of Health or Medicare or --

14 MS. TINKHAM: Yeah --

15 THE COURT: -- or a combination of both?

16 MS. TINKHAM: -- the Illinois Department of Health
17 inspects these facilities.

18 THE COURT: All right. And -- and -- I don't know
19 whether the patients or tenants or residents receive
20 substandard care, adequate care. It's not in my limited
21 experience the fact that a -- a healthcare facility, whether
22 it's a world-renowned hospital or a nursing home, is going to
23 get violations.

24 MS. TINKHAM: Uh-huh.

25 THE COURT: How serious they are or not is not a

1 matter in my -- that I can comment on with any degree of
2 certainty. But what would improve if a receiver came in? If
3 you believe the health and welfare of the residents is in
4 jeopardy -- which might be if the defendants don't have any
5 money -- what -- how will things improve if a receiver comes
6 in for the -- for these residents and patients?

7 MS. TINKHAM: I think there's two main re- -- two
8 main ways that it will improve. First, all of these
9 deficiencies, they require a plan of action. They require --
10 the plan of action is a correction plan that the State
11 requires in order to fix them. Those plans of actions to put
12 them in place require funding and money to put them in place.
13 If you can't hire more staff, if you can't train staff
14 properly, if you can't im- -- implement those plans, then
15 you're unable to carry it out and things are just going to
16 continue to deteriorate.

17 Number two, with a receiver coming in, a new
18 management company will come in. The management company will
19 be able to come in. They have the right resources, they have
20 the right properly trained staff and oversight in order to
21 help correct all of these issues at the facilities and make
22 sure that they're well run.

23 The management company, as well as the receiver, are
24 very well-known with the Illinois Department of Health and
25 know how to run these facilities and are committed to doing so

1 with --

2 THE COURT: What's the relationship between the
3 receiver and the management company?

4 MS. TINKHAM: They are completely separate
5 independent entities. They have worked together, but they
6 have no corporate connection.

7 THE COURT: So the receiver in that circumstance, it
8 would almost be a CEO or a COO employing a management company
9 that is on the ground working at the various facilities.

10 MS. TINKHAM: Correct, with the ultimate
11 responsibility and, you know, duty to the court as an
12 independent officer of the court.

13 THE COURT: And then the plan of action that you
14 spoke about that would have to be funded by someone --

15 MS. TINKHAM: Uh-huh.

16 THE COURT: -- has the Illinois Department of Health
17 required the defendants to come up with a plan of action?

18 MS. TINKHAM: My understanding is there are plans of
19 action for all of these facilities where they have been cited
20 with these deficiencies that are required to be carried out.

21 And my -- my -- Jennifer Loucks from Capital Funding
22 is able to testify to those.

23 THE COURT: And testify that they haven't been
24 funded?

25 MS. TINKHAM: Testify that they would require

1 funding.

2 THE COURT: Okay.

3 MS. TINKHAM: So if -- if there isn't funding to
4 carry it out, you're never going to be able to continue
5 upholding your obligations.

6 THE COURT: Yeah. Well, I guess my question is,
7 has -- the first step: Has the Illinois Department of Health,
8 based on a review of the violations, said there needs to be a
9 plan of action to correct it? They've said what you need to
10 do, and there has been no action taken on the plan of action
11 because there's no money to do it.

12 Has -- where in the process is that?

13 MS. TINKHAM: No, I believe that these plans of
14 action were put in over time as deficiencies were cited, so
15 some of these go back over the past year. And plans of action
16 have started to be implemented. They just are required to
17 continue carrying them out. And without the funding, my point
18 is, they can't continue to be carried out.

19 THE COURT: Wouldn't the Illinois Department of
20 Health have a report of some kind if something that's been
21 required to be performed hasn't been, or is that -- is it
22 premature?

23 MS. TINKHAM: Yeah, it would depend on when they're
24 in there to do their survey and to decide -- and they're
25 monitoring, which is where they know where it is in the

1 process. I don't think it's something that is a daily --

2 THE COURT: Okay.

3 MS. TINKHAM: -- tally.

4 THE COURT: All right. Anything else that I should
5 be considering on the, you know, the other reasons why a
6 receiver is appropriate? I think I clearly have the legal
7 ability to appoint one. I don't think the federal rules
8 prevent me from doing it. I think -- and I've appointed
9 receivers on other cases in the past.

10 I don't -- unless, Mr. Ahmad, when you speak, you can
11 speak to whether or not I'm acting beyond my authority if I
12 appoint one, but I believe I have the authority to do it. And
13 I believe one -- one factor is the agreement of a defendant to
14 a receiver, at least the entitlement to a receiver based on
15 the loan documents. Not necessarily dispositive, but it's a
16 major factor.

17 But is there any reason I can't do it legally,
18 understanding that you have the right to argue I shouldn't?

19 MR. AHMAD: No, Your Honor. I actually agree with
20 that analysis. I think when -- when -- humbly, when we spoke
21 on Monday, you seemed to be questioning or, you know, of the
22 view that the agreement in and of itself --

23 THE COURT: Right.

24 MR. AHMAD: -- was dispositive, and that's where the
25 law says it's actually one factor. An important one, I agree

1 with you. And that's actually kind of the exact legal
2 analysis, correct.

3 THE COURT: Okay. All right. So I think we're all
4 on the same page on that.

5 Does plaintiff agree with that?

6 MS. TINKHAM: Yes, Your Honor. And -- and I do just
7 have one additional point we think weighs in support of
8 appointment of receiver, if I may just summarize here. But we
9 believe that, you know, Mr. Petersen, who is the ultimate
10 owner, he is absent. He has not been present at these
11 facilities. We've been told he is unavailable for a
12 significant amount of time.

13 Mr. Campbell has been brought in, but he's a
14 consultant. He is not an officer of the company, and there's
15 absent ownership, which I do believe was actually a recent
16 citing on other -- not these defendants, but other facilities
17 by the Illinois Department of Health recently.

18 THE COURT: What -- can you tell me, if you're
19 allowed to and if you have knowledge of, what can you tell me
20 about the findings of the receiver in the Rockford case so
21 far?

22 MS. TINKHAM: If I can just have --

23 THE COURT: And if it's --

24 MS. TINKHAM: -- a second.

25 THE COURT: -- if it's something confidential that

1 shouldn't be disclosed publicly or in the presence of other
2 facilities, you don't have to, but if it's something that
3 you're comfortable disclosing, I'd like to know what -- what
4 that receiver's found.

5 MS. TINKHAM: If I can just have a second.

6 THE COURT: Go ahead and speak to your colleague;
7 sure.

8 (Counsel conferring.)

9 MS. TINKHAM: Your -- Your Honor, I'm not comfortable
10 sharing the findings of the other facilities.

11 THE COURT: That's fine. If I think it's important,
12 I'll ask Judge Johnston to see if he'll modify his order to
13 allow disclosure to me, but that's fine. I didn't know if
14 there was something that could be publicly disclosed.

15 Okay. Anything else from plaintiff?

16 MS. TINKHAM: No, Your Honor. I just --

17 THE COURT: I won't foreclose your ability to call
18 witnesses if there's a fact issue that needs to be -- or I'd
19 need to hear testimony about. Okay.

20 All right. Mr. Ahmad, on behalf of the defendants.

21 MR. AHMAD: Thank you, Your Honor. And again, for
22 the record, Scott Ahmad from Winston & Strawn on behalf of the
23 defendants.

24 I think if Your Honor's okay with it, I -- I won't
25 retread the law, because I think we're in -- in general

1 agreement on that. Maybe I'll touch on it at the end if any
2 issues come up with it, but the legal standard itself --

3 THE COURT: Slow down.

4 MR. AHMAD: Oh, sorry.

5 -- the -- the legal standard itself, we -- we agree
6 with how it was -- how it was stated. We -- we acknowledge
7 those provisions in the agreement. We're not contesting that
8 there was an event of default. But we think that under
9 Rule 66 in the case law, the Court is still required to -- to
10 weigh the other equitable factors, albeit acknowledging that
11 consent in an agreement is an important factor as well.

12 THE COURT: Okay.

13 MR. AHMAD: Okay. In terms of the -- the objection
14 points that we contest, Your Honor, so, first of all, and I'll
15 cover this in a little bit more specific, but none of this --
16 the issues that were raised are actually an emergency, right?
17 A lot of these -- and -- and some of those even came up were
18 things that these creditors, who are extremely sophisticated
19 creditors, have known about for a very long time, or were
20 issues in the home well before recent months.

21 I'd like to go to patient harm next, which is one of
22 the issues that they raised. They have no evidence, they have
23 cited not one evidence of one patient in these particular
24 defendant facilities that has been harmed as a result of the
25 data breach or the recent situation within the -- within these

1 defendant entities. They talked of tags; they talked of
2 regulatory situations and correction plans. And as Your Honor
3 pointed out, those are somewhat of a typical thing in -- in
4 nursing homes. There's not one incident, for example, of, oh,
5 three weeks ago, there was a news article that -- that this --
6 this facility got tagged; there was a, you know, report of
7 this.

8 There -- there's not one single ev- -- it's -- it's
9 one thing to come into court and say, Oh, well, these things
10 are plagued by tags. These are sophisticated lenders that get
11 regular reports and information, monitor these facilities and
12 have access to the same public information that -- that we do,
13 and haven't cited any recent things in December or January. I
14 think that's very important coming in here on -- on an
15 emergency motion and pretending like -- like there's been some
16 situation or status quo that has -- that has changed.

17 Another very important point -- and I was at the
18 hearing before Judge Johnston. One of the -- the primary, if
19 not the -- the most salient basis for Judge Johnston's opinion
20 was the lack of PGL insurance within those particular
21 defendant entities. And Mr. -- we have a great relationship
22 with Mr. Ottaviano. Sat there in court and said, Your Honor,
23 I'm telling you, I've seen these cases; they're never going to
24 get the insurance, et cetera, et cetera, et cetera. And I
25 said, We're working on it; we're working on it; we're working

1 on it.

2 Look where we're at a week from now. We -- we have
3 the insurance. And I've been forthcoming in providing them
4 that information. As -- as Paige noted, Monday after the
5 hearing, I sent them what we had. This morning, I got an
6 update with the schedule with all -- with all the covered
7 entities, which will --

8 THE COURT: How are you going to pay for it?

9 MR. AHMAD: -- which will include the defendant
10 ent- -- so the policy is now bound, and we have 30 days to pay
11 for it.

12 So two things to -- to make sure are important on
13 that. Number one, because we've now bound the policy, we are
14 now permitted to -- to file for bankruptcy or seek
15 court-ordered reorganization.

16 THE COURT: Yeah, I had that question before.

17 MR. AHMAD: Yeah.

18 THE COURT: What prevents an entity, such as those
19 you represent, from filing bankruptcy if they don't have
20 insurance? What difference does it make?

21 MR. AHMAD: Yeah, so the -- it's a complicated issue.
22 And I confess that I'm actually not a bankruptcy expert, but
23 as I understand it, if you don't have that, you can get kicked
24 out of the bankruptcy.

25 And then the other thing, which -- which I think is

1 the more important one, and -- and apologies if I'm misstating
2 or oversimplifying any of it, I think the other issue is that
3 when you go into bankruptcy, you procure all this bankruptcy
4 and reorganization, you know, funding to pay for the service
5 professionals and, you know, and things like that, and if you
6 don't have the insurance in place, then you can't get that
7 funding to take you through the -- through the bankruptcy.
8 And so it is an important impediment or -- or thing to -- to
9 get into -- to bankruptcy. But I confess, I -- I don't know
10 all the details of that myself, other than it is a -- it is
11 apparently a pretty important requirement.

12 THE COURT: All right.

13 MR. AHMAD: And then, yeah, on the -- on the -- on
14 the payment issue, I think it's three things. So, you know,
15 one, we are in some negotiations with the State to, you know,
16 advance Medicaid. Because, you know, one of the things that,
17 you know, Paige referred to, you know, time and time again
18 is -- is liquidity issues, right?

19 But that begs the question -- right? -- of, like,
20 you know, what happens in these nursing homes is it's all
21 centered around timing of payments -- right? -- and when
22 you're getting your State, you know, payments from, you know,
23 from Medicaid, right?

24 And so one of the things that I -- I -- I know
25 Mr. Campbell is exploring is getting that from there. There's

1 also possibly -- now that we have insurance and can -- can --
2 can work to get financing in the context of a -- of a
3 bankruptcy, that may be another way that we'll be able to
4 finance the -- finance the insurance through that way.

5 So we are pretty confident now that we have the
6 policy bound that we are going to be able to pay for it within
7 the next -- within the next 30 days, especially that, you
8 know, the likelihood is now that we're going to -- to be able
9 to seek a court-ordered dissolution proceeding, okay?

10 And -- but --

11 THE COURT: And the carrier knows you're going --
12 who's the carrier, Lloyd's?

13 MR. AHMAD: No, AXA.

14 THE COURT: AX -- all right.

15 MR. AHMAD: Yeah.

16 THE COURT: They know you're --

17 MR. AHMAD: Yeah, yeah, it's my understanding they
18 deal with these things -- they deal with these things all the
19 time, yeah. So these all would have been disclosed to them,
20 and I was talking to Mr. Campbell --

21 COURT REPORTER: Slow down.

22 THE COURT: Slow down.

23 MR. AHMAD: Oh.

24 THE COURT: And let me complete my question --

25 MR. AHMAD: Yeah.

1 THE COURT: -- so I -- you're answering the question
2 I had.

3 The insurance carrier knows you're imminently going
4 to be filing bankruptcy?

5 MR. CAMPBELL: Yeah.

6 THE COURT: And you have to be in front of a mic if
7 you're going to --

8 MR. CAMPBELL: I'm sorry; yeah.

9 THE COURT: Just pull it over.

10 MR. CAMPBELL: Sorry.

11 Yeah, that -- that has been -- had been conveyed to
12 the broker who was surveying the market, which -- who is our
13 face to the market and communicated to the carrier. So we,
14 obviously, need to make sure that there are no triggers which
15 would negate the -- the insurance.

16 THE COURT: It -- well, I'm not an insurance expert.
17 It just seems interesting that a carrier, when you've lost
18 insurance -- you had insurance and you lost it, correct?

19 MR. AHMAD: Correct.

20 THE COURT: How'd you lose it?

21 MR. AHMAD: It -- it lapsed.

22 THE COURT: Well, it lapsed, but why did it lapse?
23 Couldn't make payments?

24 MR. AHMAD: Yeah, I believe it had to do with a
25 payment issue.

1 THE COURT: All right. Well, it would seem odd
2 another carrier would come in with an imminent bankruptcy
3 filing. Of course, it hasn't -- hasn't accrued yet or -- I
4 don't believe. You don't have insurance, literally, at this
5 moment, correct?

6 MR. AHMAD: We do. No, we do literally have -- have
7 it this moment, yes.

8 THE COURT: All right. But is it contingent on
9 paying?

10 MR. AHMAD: Well, so, of course, if we didn't pay
11 within 30 days, of course, they could -- they could then
12 cancel, correct.

13 THE COURT: Okay.

14 MR. AHMAD: Correct. But -- but the one point on
15 that, Your Honor, remember is, is once we procure the --
16 the -- the financing to go into bankruptcy, then part of that
17 financing, that could be one of the sources that covers the --
18 the insurance policy, which is why -- which is why they are
19 willing to do that in those circumstances, issue a policy
20 subject to that.

21 THE COURT: All right. If the bankruptcy receiver or
22 trustee authorizes that payment?

23 MR. AHMAD: Correct.

24 THE COURT: All right. Because they'll have a number
25 of competing creditors seeking payment. Maybe the

1 insurance -- maybe secured creditors that have priority over
2 the insurance carrier, such as the plaintiffs.

3 How does the carrier -- again, I'm getting into a
4 decision -- something the bankruptcy trustee will have to
5 decide, but you've got almost \$20 million in secured debt
6 that, I think, takes priority over unsecured debt. How is a
7 carrier going to get paid? You don't have \$20 million, I
8 don't think. If you did, you wouldn't be in this position.

9 And if the carrier's behind the line with secured
10 creditors, the major one being likely the plaintiffs, again,
11 I -- maybe I'm misunderstanding how these things work, but I
12 don't know how that's going to happen.

13 Now, if you need to talk to your client, you can, or
14 he can explain it. I'm happy to be educated on this.

15 MR. AHMAD: Yeah, and there's a lot of different ways
16 that it happens, and -- and I'm sure David will shake his head
17 if I'm wrong. But, for example, you know, like, with the --
18 with these lenders and other lenders in the discussions that
19 were happening in December and January, you know, we were
20 asking them to, you know, contribute escrow and things like
21 that. But, obviously, everybody has an interest, all of the
22 lenders -- right? -- in making sure that the operations and
23 everything survives, so that there are assets preserved.

24 And so I think -- you know, it's my understanding --

25 THE COURT: Well, that's why they want a receiver.

1 MR. AHMAD: Right, that the trustee and the -- you
2 know, and the creditors then, you know, would work that out in
3 a -- you know, in a bankruptcy proceeding to make sure that,
4 you know, those costs are being paid.

5 THE COURT: Okay. Go ahead.

6 MR. AHMAD: They made an allegation that payroll
7 hasn't been being made. That's an incorrect allegation that
8 payroll is being made. Mr. Ottaviano again said in court two
9 weeks ago the payroll checks have been cut. This was at the
10 end of January. Those checks are going to bounce. They
11 didn't bounce. The -- the payroll has been paid. There's no
12 evidence that people's paychecks aren't cashing.

13 THE COURT: Well, was he speaking about the
14 defendants in Rockford, these defendants, or is the payroll
15 for all of them a collective enterprise? If he said it
16 two weeks ago in Rockford, that relates to a different group
17 of defendants than these.

18 MR. AHMAD: No, those -- those -- those payments go
19 out from a more general fund, as --

20 THE COURT: Okay.

21 MR. AHMAD: -- yeah, as I understand it.

22 And as I understand it, that CIBC account --

23 MR. CAMPBELL: Uh, no.

24 MR. AHMAD: -- that they -- they --

25 THE COURT: Oh, hang on.

1 MR. CAMPBELL: I can -- I can explain that, if that
2 would help, Your Honor.

3 THE COURT: Well, yeah, if -- if there was a
4 representation made in court last week that -- or two weeks
5 ago, whatever it was, before Judge Johnston, that people
6 aren't getting paid -- or they are getting paid, how does that
7 carry over to the payment of employees in this case for which
8 plaintiffs claim they haven't gotten the records that would
9 show if people are getting paid or not?

10 MR. CAMPBELL: Would you like me to answer?

11 THE COURT: I would.

12 MR. CAMPBELL: Okay. So there -- we have, across the
13 Petersen enterprises, so that would include these -- these
14 plaintiffs here, as well as many other assets, if you will, or
15 homes, there has not been a missed payroll. The way we make
16 payroll -- so each -- Attorney Tinkham referenced the opcos.
17 Each operating company has three bank accounts, two of which
18 receive funds from government payers; one which we pay bills
19 out of. And they are very -- they are specific to that
20 distinct operating company.

21 That operating account is a -- what's called a ZBA
22 account, a zero balance account, so that we never have any
23 cash in it. So what we do is we will write \$200,000 of
24 payroll checks. We will then move into that operating account
25 from the depository accounts \$200,000. That is -- and -- and

1 we do that because the payroll that we cut out of a distinct
2 property, or a distinct opco, are for those employees at that
3 opco. Now, of course, we do have corporate employees and
4 things like that, which don't bear here, but there has not
5 been any payroll missed, and that's the tactical steps that
6 are involved in -- in making those -- those disbursements.

7 THE COURT: All right. Do you have evidence to the
8 contrary on the plaintiff's side?

9 MR. OTTAVIANO: Your Honor, Kenneth Ottaviano on
10 behalf of the plaintiff.

11 That was raised in the Rockford matter. I don't
12 believe that was raised in this matter. Again, we were not
13 provided information in this matter.

14 THE COURT: All right. Well, what do you mean
15 "raised in the Rockford matter"? Was there evidence in the
16 Rockford case that payroll was missed?

17 MR. OTTAVIANO: No. I believe my exact quote was --
18 because it was not Friday yet -- that there's a possibility --

19 THE COURT: Okay.

20 MR. OTTAVIANO: -- that payroll would be missed.

21 THE COURT: All right. And the representation from
22 your client is that no payroll has been missed?

23 MR. CAMPBELL: That is correct.

24 THE COURT: Is it twice -- twice a month or every two
25 weeks?

1 MR. CAMPBELL: 15th and 30th.

2 THE COURT: Okay. And the last payment was made --
3 what is today? The 8th? So your next payment's due in a
4 week.

5 MR. CAMPBELL: Correct.

6 THE COURT: Okay. But the one on January 30th was
7 made --

8 MR. CAMPBELL: Yes, it was.

9 THE COURT: -- for all entities in this case?

10 MR. CAMPBELL: Correct.

11 THE COURT: And all entities in the Rockford case?

12 MR. CAMPBELL: Correct.

13 THE COURT: Okay.

14 MR. CAMPBELL: Well, I'm -- I'm sorry; let me
15 rephrase that. Because of the receiver in the receivership
16 order --

17 THE COURT: Yeah.

18 MR. CAMPBELL: -- we -- we don't have the visibility
19 that we did prior to the receiver. So I can only make
20 statements up until the appointment of that receiver. After
21 that, I cannot make any statements --

22 THE COURT: Understood. Okay.

23 And what are the balances in the government-funded
24 accounts? Are there sufficient funds there to fund your next
25 payment on the --

1 MR. CAMPBELL: Our next payrolls?

2 THE COURT: -- yeah, your next payroll in this month
3 and the middle of this month?

4 MR. CAMPBELL: Yes. Based on my conversations with
5 the principal, Mark Petersen, late yesterday afternoon, when
6 we talk about cash and cash requirements, we did have
7 sufficient cash to do that.

8 In addition, we do collect cash and receivables on a
9 daily basis, so we -- we know how much is coming in at what
10 parts of the month in order to -- to make sure there's
11 sufficient liquidity to make those -- not only the payroll
12 payments, but any other critical vendors that may need to be
13 paid at that time.

14 THE COURT: How about the plaintiffs?

15 MR. CAMPBELL: In --

16 THE COURT: Yeah.

17 MR. CAMPBELL: -- in those -- in those -- yes.

18 THE COURT: Are they paid out of the individual
19 accounts?

20 MR. CAMPBELL: They are paid out of -- each of those
21 payrolls are paid out of those specific individual accounts.

22 THE COURT: No, I'm -- I'm -- my -- I'm sorry; my
23 question wasn't clear.

24 Where do the payments to the plaintiff, Capital
25 Funding, where do they come from?

1 MR. CAMPBELL: They would come from those accounts.

2 THE COURT: The individual accounts?

3 MR. CAMPBELL: Yeah, those individual accounts,
4 correct.

5 THE COURT: All right. Is there any provision to pay
6 the accelerated loan or even make the monthly payments out of
7 those accounts?

8 MR. CAMPBELL: At -- at this point in time, there is
9 not sufficient liquidity for -- and we can -- I'm -- I'm happy
10 to -- to explain that and the challenges. But if we had
11 had -- certainly, if we had had sufficient liquidity to make
12 the loan payments for the plaintiffs, we would have done so,
13 as we had up until our first payment default, which was in
14 December, I believe.

15 THE COURT: Okay. All right. Go ahead.

16 MR. AHMAD: And then just turning to a couple last
17 points, Your Honor, provision of information. And the order
18 of things is important. We got a receivership granted against
19 eight of the entities in the Rockford case on -- it was
20 January 25th, January 26th. Immediately after that,
21 plaintiff's counsel signed up another client, then they
22 started making information requests.

23 So when you look at the date of those information
24 requests that Paige is referring to, they're January 30th --
25 right? -- so the end of last month. They say: "Please

1 provide this list of information now." And there was -- there
2 was a representation made, which was somewhat corrected, which
3 was: We refuse to provide the information.

4 And I'll read Mr. Campbell's email into the record.

5 "We are in receipt of the request" --

6 THE COURT: Slow down if you're going to read it.

7 MR. AHMAD: -- "but with the limited management team
8 bandwidth and the court-ordered receiver action, we are
9 mandated to focus on that workstream for the next few days."

10 There's never been a refusal to provide information.
11 We're working on providing that information. I think we heard
12 statements from Paige that I've been updating them on the
13 insurance. I know David is working on the financials. The --
14 the Petersen team and Mr. Campbell are working -- we obviously
15 have a limited time and limited resources -- are working
16 around the clock on these information requests.

17 Mr. Campbell even canceled a personal trip this
18 weekend so that everyone can be working on these things.
19 We've spent the last two weeks, Your Honor, integrating a
20 receiver -- right? -- into -- into eight of the properties.

21 And as a matter of fact, in that receiver action -- I
22 forget the gentleman's name who testified from the other
23 entities. He said, Actually, yeah, they've been very
24 forthcoming with respect to information. We had -- our
25 forensic person was allowed to -- was allowed to come on site.

1 They had given all the books and records. They -- they
2 actually concede in their papers there's been no allegation
3 of -- of fraud or, you know, or anything like that.

4 Mr. Campbell, since he's come on has -- has tried to
5 be very forthcoming. We're going to -- we're going to get
6 them all that information, because we've been providing it
7 to -- to all creditors. So there's not been a refusal to
8 provide information.

9 THE COURT: How long has Mr. Campbell been on the
10 scene for these companies?

11 MR. AHMAD: He was -- he was retained in late
12 December, Your Honor.

13 THE COURT: Okay.

14 MR. AHMAD: Yeah.

15 THE COURT: Okay.

16 MR. AHMAD: Yeah.

17 THE COURT: All right. Go ahead.

18 MR. AHMAD: There -- there -- there was a lot in
19 the -- in the -- in the papers just in the motion just one
20 sentence on this about there was a forensic analysis done, um,
21 of the other entities. Um, there's been no forensic analysis
22 done of these particular entities -- right? -- and so we -- we
23 would object to any use of some forensic analysis, which we
24 never actually were provided.

25 Their client testified in the Rockford hearing about

1 his interpretation of the forensic analysis that was done, but
2 there's been -- there's been none, and there's no record of --
3 yet of anything like that with respect to those properties.

4 Now, we are working to, you know, get them the
5 information, and maybe that's an issue they'll want to --
6 they'll want to take up at that time.

7 And then just a couple few last points. There was a
8 lot of talk about liquidity and stretching. You know, as I
9 read the -- the case law, I don't know that illiquidity in and
10 of itself is a basis for -- for a receiver.

11 One of the other things about liquidity is that we've
12 approached all of the creditors and asked them to release
13 escrow to kind of help us get into, you know, bankruptcy and
14 facilitate operations. All of them have refused to provide
15 additional funding and capital for that purpose.

16 THE COURT: They're under no obligation to do it, are
17 they?

18 MR. AHMAD: Understood. But they could, and -- and
19 often do, by the way, in these -- in these situations. Butera
20 [sic] is Mr. Flan- -- is the -- or so Mr. Flanagan is the
21 proposed receiver here.

22 THE COURT: Yes.

23 MR. AHMAD: Butera is the management company that he
24 works with. Butera has just as many tags and complaints as,
25 you know, any other -- you know, any other management company.

1 I know they didn't want to get into any issues of the other
2 receiverships, so I won't. But suffice it to say, there's
3 been some, you know, growing pains and operations. It's --
4 it's hard for me to tell whether that's, you know,
5 run-of-the-mill things with getting a receivership off the
6 ground -- right? -- or other some true issues that, you know,
7 are -- are issues when you try to break off entities that are
8 managed like this and, you know, and segregate them. But we
9 talked a little bit about -- about that at the hearing on --
10 on Monday.

11 And then, you know, I think the last two things,
12 Your Honor, is we obviously object to the -- to the
13 appointment of a receiver. We don't think there's a record
14 for it, we don't think there's an emergency, and -- and we
15 think a lot of the facts that they've alleged about this just
16 aren't -- aren't plain correct.

17 If Your Honor is inclined to -- to, you know, to
18 grant a receiver, I think there's -- you know, there's two
19 things that are pretty important to us. You know, I think one
20 of the things we would propose would be that Mr. Campbell, as
21 opposed to Mr. Flanagan, be appointed at the -- as the
22 receiver, given his already -- I mean, he's essentially
23 functioning in that role and he's -- and when we file, he's
24 going to be appointed the chief restructuring officer, and he
25 has experience in these things and he can testify about that,

1 if you're interested in hearing his -- his experience in these
2 types of matters.

3 And then I think the other thing that we had a
4 colloquy about on Monday was, you know, we've been very open
5 about kind of what our -- what our plans are with respect to
6 the -- to the -- to the reorg. And, you know, because we
7 think there's been a -- you know, my characterization --
8 right? -- an incorrect, you know, emergency, you know, button
9 pushed here, you know, we don't want to be impacted in our
10 ability to take these entities into bankruptcy.

11 And we think as -- you know, as Your Honor probably
12 knows under the case law, you have great discretion to set the
13 scope of the, you know, of the receivership order. And so,
14 you know, in that order, we would, you know, we would like
15 something that, you know, doesn't prevent, you know,
16 management from -- you know, from taking the companies --
17 these defendant entities into Chapter 11.

18 THE COURT: Well, if I appoint a receiver, that's
19 management. You're not going to have a competing receiver and
20 an operator, as I understand it. That's chaos. The receiver
21 is, in effect, running the company under court supervision to
22 assure that the assets of the company and the -- in this case,
23 the patients and residents of these facilities are being
24 treated appropriately.

25 But I -- perhaps there's some limits I can place on a

1 receiver, but I've -- in the few cases I've had where I've
2 appointed a receiver to allow a receiver and to have another
3 person run -- competing or offering differing views or
4 disputing the authority of the receiver leads to chaos. You
5 can educate me otherwise, if it -- something like that's done
6 in healthcare facilities, but I have always understood a
7 receiver to have ultimate control and to make decisions,
8 again, under court supervision, in the best interest of the
9 entities that the receiver is running.

10 I'm not sure what you're asking for where you want
11 their hands tied. If the receiver thinks a bankruptcy -- if I
12 appoint a receiver and they think bankruptcy is the best
13 course to go, they have the authority to go to bankruptcy,
14 file -- file for bankruptcy, file for reorganization,
15 presumably, not liquidation. And then a bankruptcy judge
16 would oversee the reorganization.

17 Whether the trustee or professionals appointed by the
18 trustee would be Mr. Flanagan or Mr. Campbell, if he's the
19 receiver here, it would be up to the bankruptcy judge, because
20 their -- their interest -- their sole interest is preserving
21 the assets of the estate, making sure that creditors get paid
22 in a -- in a fair way; and in a reorganization, making sure
23 the company comes out stronger at the end of it than it was
24 when it came in. These are pretty fundamental principles, as
25 far as I know. But I don't know that you can have two people

1 running a company; one under court authorization and one under
2 the old regime.

3 Tell me if I'm wrong, either side.

4 MR. AHMAD: Yeah, and I was -- I was merely
5 suggesting a sentence that would just say, you know, the --
6 you know, again, the receiver has all the powers that you're
7 describing, you know, but nothing would prevent, you know, the
8 defendant entities from making the decision to be included in
9 a Chapter 11. So some -- something -- something as simple as
10 that.

11 And I do think that, Your Honor, as I -- as I pointed
12 out on Monday, the way the bankruptcy code works -- right? --
13 is that once a filing is made -- right? -- then if there's
14 a -- if there's a receiver in place, that receiver then turns
15 over all the estate pros- -- property to the bank. A
16 provision like that exists -- right? -- in part because there
17 are instances where, you know, there's a receiver overseeing
18 certain entities or, you know, or parts of thing that become
19 part of a bankruptcy. And so that -- that's the way I was
20 envisioning, understanding Your Honor's point. But -- and
21 obviously, principally, we object to the appointment of a
22 receiver to begin with --

23 THE COURT: I understand.

24 MR. AHMAD: -- but yeah.

25 THE COURT: Okay.

1 MR. AHMAD: Yeah.

2 THE COURT: All right. Anything else plaintiffs want
3 to say?

4 MS. TINKHAM: Yes, Your Honor, I'd like to respond to
5 a few of those points, if I may?

6 THE COURT: All right. Go ahead.

7 MS. TINKHAM: I'll start with the provision within a
8 receiver order to prohibit bankruptcy filing. We certainly
9 object to that. When the -- a receiver's appointed, we -- we
10 do want him to have full authority over these entities. The
11 point here is to have an independent officer governing the
12 entities when appointed by the Court reporting to the Court.
13 So we do think it's in -- within Your Honor's authority to not
14 have a provision carving out a bankruptcy filing from the
15 order.

16 I also want to go back to the -- the sense of there's
17 not an emergency here.

18 THE COURT: Hang on one second, because I have a
19 comment about that I want to make.

20 Are you -- you need to talk to your client for a
21 moment or are you okay?

22 MR. AHMAD: No. I apologize.

23 THE COURT: All right. There is an emergency.
24 There's been a major default. There's a \$20 million
25 emergency. So I -- I don't think this was a premature motion,

1 and I so find. There's a -- there's a major default. That's
2 an emergency. When your major creditor isn't getting paid and
3 they accelerate the loan, of course, that's an emergency, in
4 my mind.

5 Go ahead.

6 MS. TINKHAM: Yes. And -- and what I wanted to say
7 for the record in addition to that is just that, you know, we
8 know Mr. Campbell. We have great respect for him. We know
9 the Winston & Strawn attorneys. We have great respect for
10 them. And our clients have trusted them throughout this
11 process and given them the rope to get here. But we are where
12 we are two months later, and it's the hand they've been dealt,
13 is that there isn't funding to continue these entities
14 forward, to get the insurance, to ensure that these entities
15 have proper food, pharma for the residents, and to just
16 maintain these facilities.

17 One of the statements made was liquidity is not a
18 factor. Well, it is a factor, because when there isn't
19 liquidity, it's harming our collateral and it's harming the
20 residents. It is a reason to have an appointment of a
21 receiver.

22 THE COURT: Do you object to the suggestion by
23 Mr. Ahmad that Mr. Campbell be appointed receiver in this
24 case?

25 MS. TINKHAM: As much respect and I know as -- as

1 knowledgeable and great Mr. Campbell is, we do object. He's
2 not an -- can't be an independent officer here because he's
3 been employed as a consultant for the defendants. He has, you
4 know, intimate workings with the defendant's management; he's
5 been employed by them; he has -- they are his client. I don't
6 think that he can act here as an independent officer of the
7 court.

8 And I -- I do believe Mr. Flanagan is the appropriate
9 person here to be the receiver. One, because he's been
10 appointed in the other cases. But, two, he really is -- he
11 has 35 years of experience of running these types of
12 facilities. He knows the state, he knows the -- how to run
13 them, and how to oversee the management.

14 There was also some talk of not trusting his
15 management company -- management company that was brought in
16 in the Rockford case is actually completely different than the
17 management company that they've proffered to bring in in this
18 case. So I -- you know, those statements with respect to
19 Tutera I think are completely separate from this proceeding
20 here.

21 THE COURT: All right. Anything else?

22 MS. TINKHAM: Yes, I just -- two quick points. With
23 respect --

24 THE COURT: Not too quick. Slow down. Okay.

25 MS. TINKHAM: Number 1 --

1 THE COURT: All right.

2 MS. TINKHAM: -- with respect to the insurance, while
3 we've heard that it's bound, we -- we haven't received any
4 evidence. All we received today was this preview statement
5 and -- and still no evidence of that. I do trust Mr. Ahmad
6 and his statements, but we have not received any evidence of
7 it. We heard that it will require 30 days to fund it. We
8 don't know how much that's going to cost. And while they
9 believe that they are going to obtain financing, we haven't
10 heard any concrete evidence of that coming anytime soon.

11 And we've heard statements that they're trying to get
12 advances from Medicaid for over a month now. We've heard that
13 they're trying to get financing for bankruptcy for over a
14 month now. So time is just running short to expect that
15 that's going to actually happen now.

16 And then the last point I did want to make was
17 with -- or I'm sorry -- two more points, but I'll make them
18 quick.

19 One was sufficient funds in the appounts -- in the
20 accounts to pay payroll. When we did receive the information
21 from CIBC this week that the checks were bouncing within the
22 accounts of these defendants, that was a check for \$37,000.
23 So if there wasn't money in there to pay \$37,000, I don't know
24 how there's going to be enough money to pay payroll. I don't
25 have evidence, but it -- it's important to keep in mind.

1 THE COURT: Which account had the checks bouncing?

2 MS. TINKHAM: Um, I'd have to ask my client if she
3 remembers the particular defendant, which -- which facility...

4 (Counsel conferring.)

5 THE COURT: Well, we can't hear her because she's not
6 on the mic. If you want to talk to her for a moment. I don't
7 need the specific account number, but Mr. Campbell described a
8 couple of Medicaid accounts or -- where the money comes in --

9 MS. TINKHAM: Uh-huh.

10 THE COURT: -- and then a zero balance account which
11 they fund to pay their payroll.

12 I don't know if they have a similar account for
13 payment of incidental vendor expenses. But what account had
14 no money in it where -- where there were checks drawn, where
15 there was insufficient funds to cover it?

16 If you want to talk to your client, go ahead.

17 MS. TINKHAM: Okay. Thank you.

18 THE COURT: All right.

19 (Counsel conferring.)

20 MS. TINKHAM: So, Your Honor, for --

21 THE COURT: Go ahead.

22 MS. TINKHAM: -- for the operators here, there's two
23 operators with respect to the defendants in this case. Each
24 of them have their own collection accounts, as well as their
25 own operating accounts that collection accounts sweep into the

1 operating accounts on a daily basis.

2 THE COURT: So two operators for the defendants in
3 this case?

4 MS. TINKHAM: Yes.

5 THE COURT: All right.

6 MS. TINKHAM: We do not know which operator account
7 it was, but it was their operating account, which is the
8 account we exercised control over that was bouncing the
9 checks. So that would be where -- all of the government
10 collections come in to a lower account, they get swept into
11 that operating account. That operating account is what they
12 pay out of. That's the account that was bouncing the checks
13 and didn't have sufficient funds.

14 THE COURT: All right. Do you have information about
15 that, Mr. Ahmad or Mr. Campbell?

16 MR. AHMAD: If I could defer to Mr. Campbell.

17 MR. CAMPBELL: Yeah, I'm happy to ans- -- answer
18 that.

19 THE COURT: Make sure the mic's closer. Just pull it
20 in.

21 MR. CAMPBELL: I'm sorry. I'm happy -- I'm happy to
22 answer that.

23 They have to be manual sweeps. Paige referred to
24 automatic, and they are not automatic. So what happens is
25 that one of the cash management or treasury people at -- at

1 the company will look at those accounts. They will determine
2 what needs to be moved to the operating accounts and
3 physically move dollars. It is not automatic.

4 Secondly, when the account control agreements were --
5 were triggered a few days ago, we no longer had access to move
6 that -- move those dollars. So we were prevented from moving
7 dollars to cover those checks. So, essentially, by triggering
8 the account control, it was a guarantee that we were going to
9 bounce those checks because we no longer had the ability to
10 move funds.

11 THE COURT: They hadn't -- had they bounced before
12 they exercised the -- the control mechanism?

13 MR. CAMPBELL: Not that I am aware of.

14 THE COURT: Do you know otherwise?

15 MS. TINKHAM: No, I don't, Your Honor, because we
16 don't have the bank account information.

17 THE COURT: I thought you did. I thought you were
18 able to get access to this because you were on the account.

19 MS. TINKHAM: No. This was only what CIBC relayed to
20 us on the phone, all of this information. They had not given
21 us any of the actual documentation yet.

22 THE COURT: So you don't know whether the bouncing
23 occurred before you exercised your control -- well, wouldn't
24 it have had to?

25 MS. TINKHAM: Well, it was after. The -- the

1 potential to bounce was after because the phone call was made
2 to us yesterday.

3 THE COURT: I see. Okay. All right. So the -- the
4 bouncing may have been a consequence of your exercising
5 control over the account, not a -- necessarily a lack of
6 funds?

7 MS. TINKHAM: Yes. And because we don't have the
8 information, we don't know if there are other funds or not.

9 THE COURT: Okay. All right. Anything else?

10 MS. TINKHAM: And just going back to the information,
11 I'll end with this, Your Honor, is that, you know, I -- I
12 appreciate that defense counsel has indicated they're working
13 to provide it to us, but this is information -- and Mr. Hope
14 from BYS is here and can testify to it -- that he was given
15 within minutes, and it's been since January 30th and we still
16 don't have it. So it's -- it's -- it is something that is
17 easily provided, and it just has not been provided.

18 THE COURT: And it was given to him within minutes
19 in, what, the Rockford case?

20 MS. TINKHAM: Yes.

21 THE COURT: Okay.

22 MS. TINKHAM: And not pursuant to a court order. It
23 was, he went for that lender. He said, I'm the lender's
24 consultant. I need X, Y, and Z information, and they provided
25 it to him before the entry of the receiver order.

1 THE COURT: Okay. All right. Anything else by
2 either side?

3 MR. AHMAD: Yeah, the only thing just on that was
4 when he received that information, it wasn't like he emailed
5 one day and it was like, here's a ZIP file with the
6 information. He was in town, you know, on premise get -- you
7 know, getting all that information. So again, it's a little
8 bit of an overcharacterization of the -- you know, of the --
9 again, we are working on providing that information into all
10 creditors --

11 MS. TINKHAM: Your -- your --

12 MR. AHMAD: -- for that matter.

13 MS. TINKHAM: Your Honor, it's not paper information.
14 They gave him access to pull the information electronically.
15 They can do that anywhere.

16 THE COURT: Okay. All right. Well, does either side
17 see the need for an evidentiary hearing to be held? The
18 petition was supported by affidavit. So is there anybody that
19 need -- feels the need to call a witness under oath and have
20 them -- him or her testify about any of the assertions made by
21 counsel?

22 First, from plaintiff?

23 MS. TINKHAM: No, Your Honor, we don't feel the need
24 to call -- call witnesses, unless they need to be examined by
25 defense counsel.

1 THE COURT: And Counsel?

2 MR. AHMAD: Neither do we, Your Honor.

3 THE COURT: Okay. All right. Well, I'm going to
4 grant the motion. I -- this motion for appointment of
5 receiver. The -- not the only reason, but the primary
6 reason -- certainly, the one that carries the significant
7 amount of weight in my mind is the default of the defendants
8 on the nearly \$20 million in loans, and the fact that when
9 they got those loans, they agreed as a condition of receiving
10 that money that the secured party, plaintiff here, is entitled
11 to appointment of a receiver upon the occurrence of an event
12 of default. There's been a concession; there's been an event
13 of default, of course, which is not surprising. It's
14 happened, and no reason to contest it. And on the record,
15 there's been a concession that has occurred. That puts into
16 operation Section 2(d) of the assignment of rents and leases,
17 and so that is a key factor in my determination that a
18 receiver should be appointed.

19 Secondly, the fact that insurance has been obtained,
20 there's no indication it's been paid for. I raised a number
21 of questions about whether or not -- you know, what the scope
22 of that insurance is that plaintiffs had argued that they
23 should be on the insurance. They're not.

24 I appreciate that defendants have gotten a -- found a
25 vendor -- or an insurance company to insure them, but whether

1 it's going to be paid for, whether it's going to have the
2 proper parties listed on it, is -- is unknown at this point.
3 Financing for that insurance policy is unknown at this point.
4 Having Medicaid payments accelerated at this point is not a
5 done deal, or by any means something that can be guaranteed.
6 All of these indicate a huge potential for a lack of
7 liquidity. You owe \$20 million. There is no liquidity.

8 Now, it's possible, I suppose, that in -- and I'm
9 hopeful that the receiver can manage these companies so they
10 can be reorganized, employees can be paid. Because if
11 employees don't get paid, residents suffer. That's a given in
12 a medical facility, an elderly care facility, or any type of
13 health facility, people are there because they need help. If
14 the workers aren't getting paid, they're not going to work.
15 And when they don't work, patient health suffers,
16 significantly. So I think that is a paramount concern to any
17 receiver, and they have to make sure that occurs.

18 And, therefore -- and I think given the -- what is a
19 crushing debt that is currently owed by defendants, a receiver
20 is necessary to preserve the assets that are there, to make
21 sure that the patient health does not suffer because of any
22 missed payments to employees.

23 And for all those reasons, I think a receiver ought
24 to be appointed.

25 I don't know Mr. Campbell, I haven't read a résumé of

1 his, he seems impressive based on his testimony today, and
2 also, plaintiffs have conceded he's an impressive person
3 relating to the type of expertise that's needed to serve as
4 receiver over healthcare facilities, but I see that -- I've
5 read Mr. Flanagan's résumé, Judge Johnston saw fit to appoint
6 him, and I think there is certainly efficiencies in having the
7 same receiver in both cases.

8 These defendants are related. They're related
9 entities in many ways. And Mr. Petersen apparently is --
10 oversees all of it, at least in some ownership capacity. So
11 having two different receivers I think is inefficient and
12 would diminish the funds of the estate over which they are
13 receivers.

14 If that receiver decides he wants to -- Mr. Flanagan
15 decides that it's in the best interest of these entities to
16 declare bankruptcy or make a bankruptcy filing, he should have
17 that ability to do so without having another voice -- a voice
18 can tell him that's not a good idea, but a voice can't tell
19 him he can't do it, other than me, but not Mr. Petersen or
20 someone else.

21 So I'm going to give full authority of a receiver.
22 I'll look at the proposed order, but it should be consistent
23 with the order that Judge Johnston entered for him in the
24 Western Division. And I will appoint Mr. Flanagan as
25 receiver.

1 I assume the receivership order has a provision about
2 reports to the Court.

3 MS. TINKHAM: Yes, Your Honor.

4 THE COURT: All right. You should show the proposed
5 order to Mr. Ahmad. If there's something that requires some
6 tweaking or some change -- you've seen the order in Rockford.
7 Is that correct?

8 MR. AHMAD: Yes. Yeah, it was Exhibit B to their
9 motion.

10 THE COURT: Yeah. Is there anything about that
11 order, other than the fact it was entered, that you have an
12 objection to?

13 MR. AHMAD: Yeah, I'd want to read -- and obviously,
14 we -- we object to the -- to the appointment of a receiver --

15 THE COURT: Of course.

16 MR. AHMAD: -- but taking Your Honor's statement that
17 you want it to look the same as the -- the -- the Rockford
18 case --

19 THE COURT: Unless there's a reason for it not to,
20 but I can't on what I've seen see a reason why they should be
21 inconsistent or even different, other than the entities.

22 MR. AHMAD: Yeah, so maybe just send me the -- a Word
23 version, I'll look at it, and we -- we get it submitted, then.
24 Does that make sense?

25 THE COURT: Yeah, I'd like Mr. Ahmad to see it,

1 but -- and if there are objections, you can raise them. But
2 the objection shouldn't be to the appointment of a receiver
3 because that is noted and I've overruled that objection.
4 It -- if there's a particular facet of that proposed order
5 that doesn't make sense in the context of these entities, you
6 can explain why.

7 I'm out of the -- I'm not in chambers tomorrow, but
8 I'm accessible, but then I'm inaccessible for two weeks. So
9 if there's a -- I prefer you do this quickly so I can rule on
10 it. If not, you'll have to go to the emergency judge. Or
11 possibly we could designate Judge Johnston as the emergency
12 judge to hear this.

13 I did talk to Judge Johnston about whether there were
14 any efficiencies in consolidating these cases, not for trial,
15 but for purposes of supervision so that reports of
16 Mr. Flanagan would go to a single judge and -- is there
17 anything about the way these are structured, given the overall
18 ownership of them -- and you're the plaintiff in that case
19 too. Is that correct?

20 MS. TINKHAM: Yes, Your Honor.

21 THE COURT: Is there --

22 MS. TINKHAM: It's a different entity. We -- we are
23 counsel to the plaintiff in that case.

24 THE COURT: Okay. Is it a different lending entity?

25 MS. TINKHAM: Yes, Your Honor.

1 THE COURT: All right. But the oversight is going to
2 be similar. And the question is: Is there any reason not to
3 have -- if we can find a way in the local rules to do it, is
4 there a reason not to have a single judge, which would likely
5 be Judge Johnston, because that was the earlier filed case,
6 but is there a reason not to have a single judge overseeing
7 the activities of the receiver?

8 If --

9 MS. TINKHAM: No, we think that's fine.

10 MR. OTTAVIANO: We were trying to find a provision
11 that actually consolidated them together, but we -- we just
12 couldn't.

13 THE COURT: Well, it may -- and it may be it can't
14 be, but I think by agreement judges can agree to transfer
15 cases for efficiencies and for the good of the litigation.
16 And if Judge Johnston agrees to take it, he can oversee it.
17 It may when there's a trial, if there is a trial, they are --
18 remain -- it'll still remain before me, but it may be that the
19 supervision of the case while it's ongoing will be with
20 Judge Johnston. But I'll talk to him and see if there's a
21 mechanism that we can get through the Executive Committee to
22 allow that to happen.

23 How about -- you had no objection. What about
24 defendant?

25 MR. AHMAD: Yeah, I think -- yeah, and I'm not aware

1 of a rule that would permit it either. I'd have to talk to
2 the client. I have no -- I haven't thought about it yet, so I
3 don't have a --

4 THE COURT: More of a question of, if there's a rule
5 that allows it, do you have an objection to it?

6 MR. AHMAD: We may. Yeah, we may.

7 THE COURT: All right. That's fine.

8 MR. AHMAD: Yeah.

9 THE COURT: If we propose to do that, we'll give the
10 parties a chance to comment on any -- any proposal we have,
11 which is fine. I take no offense, so -- nor does
12 Judge Johnston. But we just thought there's a synergy and
13 efficiency in having the same receiver. There may be a
14 similar -- not a cost efficiency, because we don't cost you
15 anything, but there is a -- possibly an efficiency in having
16 the same judge look at the reports from -- for both groups of
17 entities to make sure there's not something going on in one
18 that's not going on in the other.

19 You've already indicated that you were not
20 comfortable sharing the reports of what the receiver has
21 learned in those cases, understandably. But if a single judge
22 is authorized by the parties to look at it, it may -- I can
23 see some reasons that's a good idea. That's all.

24 MS. TINKHAM: Understood.

25 THE COURT: But I'll give you a chance to object if

1 that's something that Judge Johnston and I can work out.

2 MR. AHMAD: Thank you, Your Honor.

3 MS. TINKHAM: Your Honor, with respect to the order,
4 if I can circle back that?

5 THE COURT: Yes.

6 MS. TINKHAM: It is extremely important for us to
7 have the order right away so that Mr. Flanagan can show it to
8 the State. He can go in and he can start his processes. I
9 propose, since we have ended earlier here today, that we sit
10 here and do it now. We have paper copies. I'd like any
11 comments, and that way we can get it to Your Honor to -- to
12 enter.

13 THE COURT: I think that's a good idea. Your
14 client's here; you're here. Work on any changes if there are
15 going to be -- that you need to make. Again, I'm -- if
16 there's a disagreement, I'm back in chambers. You can call me
17 out, and I'll simply rule on your disagreements. But
18 hopefully, you can work those out because these -- the order
19 shouldn't be a huge surprise to your overall client because
20 he's already seen the one in Rockford.

21 So anything else we need to put on the record?

22 MR. OTTAVIANO: No. Thank you, Your Honor.

23 MS. TINKHAM: Thank you, Your Honor.

24 THE COURT: All right. I'll be available to enter
25 that order. My courtroom deputy is here until 4:30. If you

1 can work it out before then and I enter it -- and -- and
2 there's either agreement or I can rule on the disagreements,
3 hopefully, there are none, I'll enter the order, and it'll be
4 on the docket today.

5 MR. AHMAD: Thank you, Your Honor.

6 MS. TINKHAM: Thank you.

7 THE COURT: Thank you.

8 (Proceedings concluded at 2:11 p.m.)

9 CERTIFICATE

10 I certify that the foregoing is a correct transcript from
11 the record of proceedings in the above-entitled matter.

12 /s/ Elia E. Carrión

30th day of April, 2024

13 Elia E. Carrión
14 Official Court Reporter

Date